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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/789,538

02/27/2004

Stewart Townsend

HO-P02873US0

9452

26271 7590 12/18/2006  
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EXAMINER

SAYALA, CHHAYA D

ART UNIT

PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

12/18/2006

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/789,538	Applicant(s) TOWNSEND ET AL.	
	Examiner C. SAYALA	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/28&amp;6/29/05</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Nutrient Requirements for Cats and the Nutrient Requirement for Dogs (NRC) references (see PTO-form 892) in view of Paluch et al. (US Patent 6117477) and Coffee et al. (US Patent 4190679) and further in view of Hildeblot et al. (US Patent 3916029) and the "Tux" brochures (cited by applicant, see PTO-form 1449).

The Nutrient Requirements for Cats and the Nutrient Requirement for Dogs (NRC) references establish every requirement for animals in different states of growth, as well as for maintenance. Based on this, it would have been a matter of choice to divide such requirements between "N" number of pieces or provide them all in one piece. Page 4 of NRC for Dogs establishes that energy or food required by dogs is to be based on body weight. Furthermore, it is beyond the resources of the Patent Office to call up every pet food product and count the number of pieces of food that would fulfill N=1 to <10 and to verify and measure the caloric value of each piece. That burden is being shifted to applicant.

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The other limitations are not shown by the references above, although the fat, protein, carbohydrate and fiber requirements are extensively discussed in these references. Thus it would have been obvious to determine such amounts. In this regard, see Paluch et al. and Coffee et al. that show such amounts. Those products have an outer and inner component and since they are made from different materials, then claim 7 has been met. The water activity overall is shown as being less than 0.9. In detail: Paluch teaches a dual component animal food which has an outer matrix surround an inner component and the moisture content for the outer matrix (col. 5, lines 25-26). The animal food as taught and described by Paluch provides a unitary, nutritionally complete, shelf stable animal (pet) food product. The water activity of the inner component is within the range as claimed by applicant. The outer composition or outer portion comprises a composition, which includes carbohydrates, fats, proteins and combinations thereof. The outer shell composition includes the amount of protein, fat and carbohydrate within the range as claimed by applicant. [Note Tables 1-4]. Col. 8 teaches that the product can be of any size. Note the sizes taught. Col. 6, lines 54-55 teaches claim 8. Col. 10 discloses the particulars of claim 26.

Coffee et al. teach a textured pet food in the form of a dual textured pet food. [Note the abstract and Example VI]. The dry portion or outer portion includes a protein, fat and carbohydrate. The water activity of both portions combined, inner and outer, is within the range as claimed by applicant. Col. 9, lines 10-25. The dual textured pet food has a soft portion (meaty) and a crunchy portion (cereal or kibble like). The dry crunchy portion has an Aw substantially the same as the soft portion.

With regard to claim 7, Hildeblot discloses a 2-component product, and at col. 3, lines 37-39, discloses that the components are of equal amounts. Note also the water activity is  $<0.9$  (col.2, line 25). The reference teaches that the product can be of any size and the shape can be a bone-shape, which would inherently meet claims 12 and 22. With regard to claim 13, it would have been obvious to manufacture the pet food product in various sizes according to the size of the dog, as shown in the "Tux" brochure. The same may be said of the caloric content for each size dog, as is already recommended by the NRC publications. Also as in the "Tux" brochure, it would have been obvious to produce a triangle shape. To modify this shape into other shapes, such as bone-shape or elongated snack would have been a matter of choice. The following claim limitations could not be compared or measured in prior art products: claims 3, 4, 5, the weight of the product, (as in each piece), a time for product consumption by the pet (claim 17), claims 18-19, claims 23-25, 29, which recite, "well-being", "messiness", etc. The office has no resources to manufacture prior art products and assess these limitations by feeding pets these prior art products and assessing them.

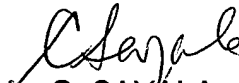
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
C. SAYALA  
Primary Examiner  
Group 1700.